

„Aktion Transsexualität und Menschenrechte e.V.“  
und „Menschenrecht und Transsexualität“

**To the situation of transsexual persons in Germany**

1. Report on human rights relating to the „universal periodic review“

Foreword

How a country position itself with regard to human rights, what human rights really do mean in a country, is best viewed by how minorities are treated. Transsexual persons<sup>1</sup> are such minorities.

It is known since years that transsexuality is inborn. This has been continuously confirmed by researches all over the world<sup>2</sup>. Nevertheless a number of lobbies still claim it to be a psychological disease.

The Federal Constitutional Court in Germany determined already 1978 (and confirmed this 2006) that a persons psyche is to be regarded as more gender identity determining than his/her genitals<sup>3</sup>. In Germany it is however still denied that the brain might determine the gender identity more than the genitals. Mainly because of the influence of a powerful psychoanalytic oriented lobby (the Germany society for sexual research – DGfS), these determinations are denied. For them, transsexuality is a disorder that is acquired after birth<sup>4</sup>. The postulate is: A person, who doesn't find its identity in the genitals but in the brain, is suffering from a gender identity disorder<sup>5</sup>. Even more some are claiming that gender identity disorder is a preliminary stage of homosexuality<sup>6</sup>.

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<sup>1</sup> In the following text I speak of transsexual women in the meaning that these are people with female gender (sexual) identity (a female brain), but with male gonads. In case of transsexual men it is meant vis versa.

<sup>2</sup> Even a new investigation of Professor Stalla in Munic (Germany) determines that a female (identity) brain is build is the 7th week of pregnancy at transsexual women.

<sup>3</sup> *“It must be regarded as medical evidence that the gender identity of a person is not only determined by its sexual organs and features, but also from his or her psyche.”* (1 BvR 16/72) and again confirmed 2006: BverfG, 1 BvL 1/04 dated 18 July 2006.

<sup>4</sup> *„It is consensus today that a persistent transsexual desire is a result of sequentially, in different phase of the psychosexual development lying, probably cumulative effectively influencing factors“* u.a. Sophinette Becker, Hertha Richter-Appelt, Deutsche Gesellschaft für Sexualforschung, Zeitschrift für Sexualforschung, Sept. 2001.

<sup>5</sup> ICD 10 and DSM-IV

<sup>6</sup> Prof. Meyenburg: *The majority of the disorders of gender identity in childhood are a pre phase to homosexuality.* Source: <http://www.vivats.de/zeitung/00-2/artikel/mayenburg.html>

*“An early manifestation of a gender identity disorders and a sexual orientation towards men are seen, differently from earlier opinions, as linked together. ....considering the fact that the majority of boys with manifested gender identity disorders in childhood later become homosexual and only a minority transsexual”* (Green 1987 a and b, Money and Russo 1979, Zucker and Bradley 1995). Sophinette Becker: Transsexualität –

What is being denied is that our brain determines our identity, our I / Ego / self. Our identity is not determined by our genitals, even if some men might believe so. Since our brain determines our identity and not our gonads, it is possible that there are girls born with penis and testis and boys with vagina and ovaries. Comparable cases are also known in conjunction with intersexuality.

**In the meantime it is known that not in *all* cases the gender identity can be read from the genitals. Therefore it must be respected that the gender identity (or the sex/gender of the brain) the true gender /sex of a person, might be different from the genitals' sex/gender.**

The statement of a person to which gender she or he belongs, must be regarded as true and rated higher than the pretended sex/gender identity „statement“ of that persons genitals.

**Under the influence of the mentioned lobby (DGfS) the German Government (Administration), take these statements and opinions unevaluated for granted<sup>7</sup> and take them as a base for legislation. This legislation forces (transsexual) persons to agree to (and believe in) a state of psychological disorder<sup>8</sup> to acquire at least a minimum of rights<sup>9</sup>.**

Laws forcing people to declare themselves as psychologically ill cannot be in accordance with the human rights. Such laws are in contradiction with the spirit of human rights.

Someone, who is utilizing unevaluated statements suitable to discriminate and exploit people (most likely minorities) is taking over complicity with the consequences of these violations of human rights. Especially in Germany this shouldn't happen.

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Geschlechtsidentitätsstörung; in: Götz Kockott/Eva-Maria Fahmer (Publisher) : Sexualstörungen. Thieme Verlag Stuttgart New York 2004, 153-201, Page 172

<sup>7</sup> Answer of the government of the Federal Republic of Germany towards an inquiry from the liberal party (FDP) „*Within science the causes of transsexuality are regarded as not yet clear and a subject to different theoretical approaches. The earlier considered biologic / somatic reasons couldn't be verified at all. It is consensus today that a persistent transsexual desire is a result of sequentially, in different phase of the psychosexual development lying, probably cumulative effectively influencing factors.*“

**Refer to footnote 4!!!**

<sup>8</sup> Because their gender identity does not correspond with their gonads

<sup>9</sup> „*Medicine and jurisdiction have, through their concessions, gotten the transsexual desire under their control*“ Sophinette Becker: Transsexualität – Geschlechtsidentitätsstörung; in: Götz Kockott/Eva-Maria Fahmer (Publisher) : Sexualstörungen. Thieme Verlag Stuttgart New York 2004, 153-201, S. 155

### Enmeshment of medicine and psychology with politics

We assume: The scientific evidences are being ignored on purpose. *Menschenrecht und Transsexualität* informed multiply and in writing all political parties about these shortcomings, but without any attention. Why?

In Germany, elections are being imminent. Election campaigns are expensive. Transsexual persons don't have moneys (see below), medical doctors and professors of psychology and of the German Society of Sexual Research (DGfS) do have more money.

If it would be accepted in Germany that transsexuality is innately, suddenly a number of the (so called) „experts“ of the DGfS wouldn't be experts anymore, their books about transsexuality wouldn't be continued to be sold, immense fees for expertises would be ceased, they would lose power and influence. And this in favour of a few transsexual people with little income. Is this ones will?

*The dignity of all human beings is untouchable. To respect and protect dignity is the obligation of all governmental power*<sup>10</sup>. It would be nice if the Federal Republic of Germany would at least respect her own constitutional law.

### The right to change forename and the transsexual law

If a non transsexual persons wants to change forename, the applicable dues are between 2,50 EUR and 250 EUR<sup>11</sup>. If a transsexual person would like to change the forename, already from the beginning twice as high dues are being charged.<sup>12</sup> But not enough: On top a transsexual person must pay so called “extrajudicial costs”<sup>13</sup> between 1000 EURO and 2500 EURO<sup>14</sup>.

A non-transsexual person has to count with fees between 2,50 and 250 EUR when changing forename. For a transsexual person the complete fee is between 1000 and 2500 EUR. The word „discrimination“ appears to be an understatement in this subject.

*All human beings are born free and equal in dignity and rights – would be lovely –*

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<sup>10</sup> Article 1, first sentence, of the constitutional law of the Federal Republic of Germany

<sup>11</sup> „First order of the execution of the law for changing the family name and the forename“ §3, Sentence 1

<sup>12</sup> Law of the costs of subjects of the free will jurisdiction, §128a, Sentence 1

<sup>13</sup> censor/“expert”-costs

### The process of expert assessment in the transsexual law

Because of the assumption that transsexual persons are mentally disordered, they are regarded as incapable to decide about their sex/gender by themselves. Instead two so called „psychological experts“ are being ordered, who, without any scientific background (there is no scientific method available to evidently determine transsexuality), will decide, if a transsexual person is allowed to live in the inborn (brain) sex/gender, or not<sup>15</sup>.

In these assessments / expertises, the transsexual person (in for her/him best case) will be classified as identity disordered. Only with this classification as mentally disordered person<sup>16</sup>, the transsexual person acquires the right to change the forename. But the forename, only! The gender / sex will not be changed. Hence a transsexual woman can get a female forename, but legally she is regarded as (a mentally disordered) man, despite the decision from the German constitutional court from 1978<sup>17</sup>, one regard in Germany (and generally within the group of psychoanalysts), Penis and Vagina as sex/gender identity determine<sup>18</sup>.

### **But our brain determines our I / Ego / Self, our identity – not our genitals.**

Both, the forced classification as mentally disordered (a transsexual person must agree, else it would not be possible to change the forename), and the legally non changing of the gender / sex identity, are violations of human dignity. A „Mr. Christina<sup>19</sup> Schieferdecker“ is made a freak, a person, who is forced to out herself her transsexual person. Thereby the German Constitutional Court claimed 2006 that forced outings of transsexual persons are not in accordance<sup>20</sup> with the human dignity<sup>21</sup>.

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<sup>14</sup> Here it seems to be that no consistent rules for the costs exists

<sup>15</sup> Independently from the outcome of the expertise, the transsexual person has to pay for the costs of the expertises in conjunction with the assessment process.

<sup>16</sup> Hereby one notice the words of the expertise, not only the diagnosis „F64.0“

<sup>17</sup> refer to footnote 3

<sup>18</sup> *A human being, who find his or her identity not in the gonads but in the brain, is suffering from transsexuality and does not suffer from gender identity disorders* (in accordance with ICD 10 and DSM IV)

<sup>19</sup> In Germany „Christina“ is clearly a female forename

<sup>20</sup> Constitutional law of the Federal Republic of Germany, Article 1

<sup>21</sup> BVerfG, 1 BvL 1/04 dated 18 July 2006: *“The wish protected by the personality rights of the expression of the own gender in the forename covers therefore also the right.....not to be forced for outing of the own gender/sex towards third persons and offices in day to day living (refer to BVerfGE 88, 87 <97 f.>).*

*..do they have to live in the discrepancy of their felt gender and also their appearance on one side and their in all documents and in official contacts visible legal gender assignment. This also disadvantages these persons...because it affects them in a sensible way to develop their personality and to protect their private sphere, as written in Article 2, Sentence 1 in combination with Article 1, sentence 1 of the Constitutional law of the Federal Republic of Germany.”*

**The gender identity of a person must be accepted. There are women, who are born with a penis and men, who are born with a vagina. Neither vagina nor penis determine our identity, the way we are as humans, but our brain, our psyche and our behaviour.**

A transsexual woman is a born (native) woman and a transsexual man is a born (native) man – but just with inadequate gonads.

### The media

The German media (TV, print media and broadcasting) abuses transsexual persons to satisfy the curiosity of the public audience. Hereby they try to find persons for their coverages who correspond as far as possible to the stereotype prejudices of transsexual persons (mainly transsexual women). The gender identity and dignity of these women are neglected. Most often it is reported over them as men<sup>22</sup> and the male personal pronoun is used, to present them as ridiculously looking men in women clothes,

The gender identity of human beings has to be respected. Especially in the media. Transsexual women are not men, but women with penis and testis. It might be that some men find their inner self in their penis, but they shouldn't conclude from this that this is the case generally. There might be human beings who determine the home of their Self in the brain, e.g. transsexual persons.

The German Television doesn't shy away from **broadcasting reports about underaged transsexual children**, who are thereby being forced outed. The consequence for the future life of these children is not considered by the media. A corresponding complaint from *Menschenrecht und Transsexualität* addressed to the German Press Council<sup>23</sup> has been rejected. Until today, 4 August 2008, it is just one <sup>24</sup>(!) report in the German media known to us that consequently respected the dignity of transsexual persons and where the person is not shown as a freak. A sad record.

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<sup>22</sup> Also the sentence „ *She once was a man*“ is discriminating and names the human being as gender identity disordered or claims that the gender identity of a human being can be found in his or her genitals. Also transsexual persons do have a brain, which is the place where the identity can be found. To describe them as steered by genitals has nothing to do with dignity.

<sup>23</sup> A supervisory authority, which is responsible for the supervision of keeping ethical standards

<sup>24</sup> Süddeutsche Zeitung Magazin, Heft 21/2008

### The „standards of treatment and assessment of transsexual persons“ (SBBT)

The SBBT require a so called „everyday life test“ over one year from transsexual persons. This „everyday life test“ should be done *before* any medical treatment and support. But it doesn't mean what the word might be indicating. It is not about to test everyday life! It should – ridiculously enough – evaluate if a transsexual person is really transsexual.

And this is what the „everyday life test“ looks like: A transsexual woman with semi bald head, a strong beard (dark beard shadow<sup>25</sup>), man shoulders and deep voice should live her public everyday life, both private and mainly also professional life, and show that she is capable to manage her life as a woman.

But how should a woman with dark beard shadow, semi bald head and deep male voice manage her everyday public life as a woman? Please note, there are *no* treatments intended that allow a transsexual woman to cover up for the effects of testosterone (Beard, Semi bald head). The everyday life test is *explicitly* intended to get such treatments (which one would regularly need to manage the everyday life test)

Such a woman is clearly forced to expose herself to a cruel and inhuman situation. Her coming out is a forced one, she is forced to make herself a public freak as a woman with beard shadow and semi bald head – just to get *eventually*<sup>26</sup> the chance to be accepted as a woman<sup>27</sup>. Thereby the outing as transsexual woman in most cases means the loss of employment (through mobbing).<sup>28</sup>

Not before the end of one year of this cruel procedure, the transsexual woman (according to the SBBT) will get the Hormone Replacement Therapy, which leads to more feminine facial appearance. A beard depilation is according to the SBBT not regarded as necessary. Also no other treatments<sup>29</sup>. Only the Hormone Replacement Therapy (HRT) and the Sex Reassignment Surgery (SRS) are, according to the SBBT, regarded as necessary for women with beard shadow,

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<sup>25</sup> It is not possible to cover this beard shadow with make up, because the beard is growing! One must just be able to pay for periwigs and make up....

<sup>26</sup> The escorting physician/therapist has to agree to the medical treatment and later – for the sake of changing the forename – to additional experts have to agree too. See below

<sup>27</sup> Sure enough it is necessary for transsexual persons to experience themselves. An experience to find out to which gender one belongs. Transsexual people are, until they are able to state this clearly, in most cases confused about their gender identity. But it is possible to execute this type of experience in a safe and protected environment, it is not necessary to execute it in day to day living and on the job. An outing at the job should only be made (because of the threat of losing it), if the transsexual persons is sure about his / her transsexuality, her/his gender identity

<sup>28</sup> A lot of therapist don't ask for this day to day living test, but one must be lucky to find one of those – and a health care insurance who is accepting this

<sup>29</sup> Periwigs, hair transplantations, speech therapy and corresponding surgeries, facial feminisation surgeries, Thyroid Cartilage Reduction (TCR), etc. are considered to be non necessary measures within the SBBT

semi bald head etc. Correspondingly, often German private and governmental health insurances refuse to cover for other expenses than the HRT and the SRS.

Thereby, already 2006, the Federal Constitutional Court pointed out that a forced outing of transsexual persons is not in accordance with the human rights<sup>30</sup>. Already 1989 (!) the European Parliament required from the Federal Government: *„The Council of Europe...requires from the member states to set regulations about the right of transsexual persons for endocrinological, plastic surgical and aesthetical sex reassignment, about the process and the prohibition of discrimination of transsexual persons.*<sup>31</sup>

Remember: According to today's state of the art in science, transsexuality is most probably inborn. Most probably, transsexual women have a (anatomically) female brain and male gonads. That the brains of transsexual women not only look like a female brain, but behave like it, has been demonstrated in many studies.

Back to the SBBT: The SBBT promotes for the sex reassignment surgery (SRS) a third classed method, which very often leads to complications and often don't generate the desired result. Better surgery methods (which are considerably cheaper) are principally not paid - since these methods are not being practised in Europe. That all this leads in practise to disastrous consequences, can be seen in the high psychological problems that many have to fight with after the sex reassignment surgery (which had been sold to them as sex adapting surgery or change of sex<sup>32</sup>) and which leads to an over-proportional number of suicides.

The content of the SBBT is also used by the health care system (private & governmental insurances) to refuse necessary medical treatment. Actually, among others, the „Techniker Krankenkasse“ tries to get a court decision that needle depilation (beard depilation) for transsexual persons don't need to be covered anymore. The SBBT don't list this depilation as necessary. The „Hallesche Nationale Krankenversicherung (HN)“ doubts the transsexuality of one of her members. It (HN) argues that her member hasn't been treated in accordance with the

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<sup>30</sup> refer to footnote 21

<sup>31</sup> German parliament, printed matter 11/5330, 11th election period

<sup>32</sup> With a sex reassignment surgery only the appearance of the genital is changed. The feeling of gender identity (psyche/brain) is not changed. Unfortunately, quite a number of so called „experts“ claim that gender (sex) would change by this. The opinion is: Penis = man, no penis = woman. To used also the Constitutional Court of the Federal Republic of Germany in one of the latest judgements the phrase „change of sex (gender)“ Cut off the penis = woman? Does anyone understand?

SBBT<sup>33</sup> and hence is not proven to be transsexual. Thereby the lady can show 6 (!) diagnoses and expertises from different medical doctors and psychologists. There are uncounted numbers of such cases.

**The standards of treatment and assessment of transsexual persons (SBBT) are cruel and inhuman and contradict in words and spirit the human rights. The SBBT are leading in practise again and again to violation of human rights and promote the discrimination of transsexual persons.**

**The standards of treatment and assessment of transsexual persons (SBBT have to be eliminated.**

The cruel and inhuman treatment of transsexual persons wouldn't be possible, if the German administration would follow the requirements from the Council of Europe to respect the rights of transsexual persons and would take the their own Federal Constitutional Court and constitutional law seriously<sup>34</sup>.

Under no circumstances transsexual persons are allowed to put under cruel and inhuman processes like the „everyday life test“ in its mentioned way of doing it., to force their outing, just *to test* if they are really transsexual!

Especially from medicine and psychology it has to be ensured that forced outings are inhibited to allow affected persons to live their lives as (transsexual) woman/man, without creating too many unavoidable irritations. It has to be ensured that transsexual persons can live their life in dignity and without discrimination.

*The dignity of all human beings is untouchable. To respect and protect dignity is the obligation of all governmental power<sup>35</sup>.*

And that also requires that the identity of a human being is not neglected or that this identity is externally assigned from so called „experts“.

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<sup>33</sup> Because their therapists in charge regard the SBBT for ethical not justifiable and the acquired experience of the work with transsexual persons is contradictory

<sup>34</sup> see footnotes 3 and 21 and 31

<sup>35</sup> Constitutional law, Article 1

## Social situation of transsexual persons in Germany

Since transsexual persons often are legally forced<sup>36</sup> to out themselves and often cannot decide about the adequate point in time, the consequences are disastrous. Moreover, there are still underlying religious extremist opinions about transsexual (and homosexual) persons in Germany, and persistent views and opinions from the national socialistic times<sup>37</sup>.

All this leads to that in 90% of all cases, parents and friends avert from the transsexual persons after his/her outing and this person loses almost all social contacts. Transsexual persons in most cases are not supported by their families and friends.

Most transsexual persons lose their job after their outing.<sup>38</sup> If they don't lose it immediately (in most cases they are forced to resign „voluntarily“) they lose it after months or years because of continued mobbing. Those transsexual persons who had the luck to keep their employer had to count with job transfer and lower salaries. Even those who have the luck to find a new employment have to accept a job for which they are by far over qualified since transsexual persons have to be grateful to get an employment at all.

Also, since transsexual persons are regarded as impossible to place by governmental job centres, they don't get paid regular benefits like advanced educations and re-trainings. Especially from these governmental offices, they are treated like mentally disordered freaks with unreasonable physical appearance, unbearable for any employer.

Because of these reasons, most transsexual persons have a terrible financial situation, respectively are poor and are depended on social health care.

Since necessary medical treatment to a large extend is not covered (by health care) it is for many (mainly women) transsexual persons difficult, to live a life in dignity and without discrimination due to their physical appearance.

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<sup>36</sup> because of the mishmash of transsexual law with SBBT through the assessment process

<sup>37</sup> So disappeared the §175, introduced respectively sharpened during the 3rd Reich, which puts homosexuality under penalty, not earlier than 1992 out of the German legislation. The law for changing names is from 1938.

<sup>38</sup> German parliament, printed matter 11/5330, 11th election period: „The European Council...in regret that transsexual persons are still discriminated in all places, marginalized and partly criminalized, in awareness that the unemployment rate under transsexual persons during the transformation phase is 60 to 80%...“ not much changed during the past 20! years

Just here help would be so easy to give and so obviously necessary. Why isn't it done? Why is, on the contrary, everything done to make sure that especially transsexual women are recognised as transsexual persons lifelong?<sup>39</sup>

Why is the birth gender of transsexual persons refused until today? What is so difficult with to accept that there are people, who are not thinking with their gonads, whose Self and self confidence as well as their gender identity is only determined by their brain and psyche? Whose gender identity is not dictated by the gonads?

A human being, who finds his/her identity in his/her brain and not in his/her gonads is NOT mentally disordered or ill.

Even if there is no testing method available until today to evidently determine the sex/gender of a human brain, it must nevertheless be respected, because we know that the true gender/sex of a human being, his/her brain gender/sex, might be different from his/her genitals and gonads.

There are women, who are born with penis and testis and there are men, who are born with vagina and ovaries. The respect for our fellow men, the esteem, with which we approach the next, and the dignity, that is inherent in all human beings, tells us that we have to accept and respect out fellow men's gender identity.

A legal implementation of the gender identity recognition could be quite simple: One should have the right to change ones forename and gender identity self determined and without any hurdles and additional costs.

*All human beings are born free and equal in dignity and rights!*

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<sup>39</sup> Even in a hugh number of official (governmental) databases, transsexual women still be listed as men!